

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**April 27, 2023 at 10:00 a.m.**

1. [21-23778-E-7](#)      **CAREN SPAULDING**  
[22-2006](#)  
**CAE-1**

**CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
1-25-23 [49]**

**RICHARDS V. SPAULDING ET AL**

Plaintiff's Atty: J. Russell Cunningham  
Defendant's Atty: Douglas B. Jacobs

Adv. Filed: 1/25/22  
Reissued Summons: 1/25/22  
Answer: 2/18/22  
First Amd Cmplt: 1/25/23  
Answer: none

Nature of Action:  
Recovery of money/property - fraudulent transfer

Notes:  
Continued from 3/23/23. The Parties requested the Status Conference be continued a month to allow them to meet and confer about setting discovery and other deadlines, and the pretrial conference.

[DBJ-1] Order substituting attorney filed 3/27/23 [Dckt 60]

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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**SUMMARY OF COMPLAINT**

The Amended Complaint filed by Geoffrey Richard, the "Plaintiff-Trustee"), Dckt. 49, asserts claims for Avoidance of Transfers as fraudulent conveyances pursuant to 11 U.S.C. §§ 544(b) and 548(a)(1), and recovering the transferred property, or economic value thereof, the for Bankruptcy Estate (11 U.S.C. § 551(a)(1). The Plaintiff-Trustee is further seeking the turnover of alleged community property pursuant to

11 U.S.C. § 542(b) for the Bankruptcy Estate. The Plaintiff-Trustee further seeks a monetary judgment against the non-debtor spouse for contribution to pay community debts. Cal. C.C.P. 883.

## **SUMMARY OF ANSWER**

Thomas Spaulding, individually and as trustee of the Spaulding Family Trust, and the Debtor Caren Renee Shinar Spaulding, filed their Amended Answer on April 6, 2023. Dckt. 66. In the Answer Defendants Thomas Spaulding, individually and as Trustee, and Caren Spaulding admit and deny specific allegations in the Amended Complaint. In addition, several affirmative defenses are asserted, including that property at issue is Thomas Spaulding's separate property and that in 2013 an Interspousal Transfer Grant Deed to Thomas Spaulding and Caren Spaulding, as husband and wife as joint tenants, "was done only to be in compliance with a stated 'requirement' that his wife was required to sign to permit refinancing the subject real property and supported by a recorded Deed of Trust dated 5/31/2013." Ansr., ¶ 22.

## **JOINT STATUS REPORT**

Plaintiff-Trustee and Defendants filed a Joint Status Report and Discovery Plan on April 20, 2023. Dckt. 68. In it they state there agreed deadlines for discovery, expert disclosures, and pretrial motions. The court incorporates those dates and deadlines into the court's Pretrial Scheduling Order.

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff-Trustee Geoffrey Richards alleges in the Amended Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F), (H). Amended Complaint ¶¶ 4, 6, 7; Dckt. 49. Plaintiff-Trustee further consents to the Bankruptcy Judge entering all final orders and judgment in this Adversary Proceeding. *Id.*, ¶ 8. In the Amended Answer, Defendants Richard Spaulding, individually and as Trustee, and Caren Spaulding admit the allegations of jurisdiction and that this is a core proceeding. Amd. Answer ¶¶ 4,6,7; Dckt. 66. Defendants also consent to the entry of final orders and judgment by the Bankruptcy Judge. *Id.*, ¶ 8.

## **ISSUANCE OF PRE-TRIAL SCHEDULING ORDER**

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. Plaintiff-Trustee Geoffrey Richards alleges in the Amended Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F), (H). Amended Complaint ¶¶ 4, 6, 7; Dckt. 49. Plaintiff-Trustee further consents to the Bankruptcy Judge entering all final orders and judgment in this Adversary Proceeding. *Id.*, ¶ 8. In the Amended Answer, Defendants Richard Spaulding, individually and as Trustee, and Caren Spaulding admit the allegations of jurisdiction and that this is a core proceeding. Amd. Answer ¶¶ 4,6,7; Dckt. 66. Defendants also consent to the entry of final orders and judgment by the Bankruptcy Judge. *Id.*, ¶ 8.
- b. Initial Disclosures were made on or before **April 1, 2023**.

c. Expert Witnesses shall be disclosed in accordance with Federal Rule of Civil Procedure 26(a)(2). Expert discovery shall open on **August 1, 2023**, and close on **September 29, 2023**, including the hearing of any discovery motions relating thereto.

d. Discovery closes, including the hearing of all discovery motions, on **July 31, 2023**.

e. Dispositive Motions shall be heard before **November 30, 2023**.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **11:30 a.m. on December 14, 2023 (Specially set day and time)**.

2. [21-23889-E-7](#)  
[RDW-1](#)

**SHARILYNN BONNARD**  
**Eric Schwab**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
4-12-23 [78]**

**PERITUS PORTFOLIO SERVICES  
VS.**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on April 12, 2023. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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<b>The Motion for Relief from the Automatic Stay is granted.</b>
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Peritus Portfolio Services (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2013 Toyota Sienna, VIN ending in 8531 (“Vehicle”). The moving party has provided the Declaration of Karla Pena to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Sharilynn Ann Bonnard (“Debtor”).

Movant argues Debtor has not made 12 post-petition payments, with a total of \$6,102.02 in post-petition payments past due. Declaration, Dckt. 80.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$13,409.94 (Declaration, Dckt. 80), while the value of the Vehicle is determined to be \$14,874.00, as stated in Schedules A/B and D filed by Debtor.

### **11 U.S.C. § 362(d)(1): Grant Relief for Cause**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

### **11 U.S.C. § 362(d)(2)**

A debtor has no realizable equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no reasonable amount of equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

## **Request for Attorneys' Fees**

A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

## **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Peritus Portfolio Services ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2013 Toyota Sienna, VIN ending in 8531 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

No other or additional relief is granted.